

**IN THE JUSTICE OF THE PEACE COURT OF THE  
STATE OF DELAWARE IN AND FOR KENT COUNTY  
COURT NO. 16**

D&S INVESTMENTS LLP,

Plaintiff Below,  
Appellant,

v.

CECILIA DAVIDSON,

Defendant Below,  
Appellee.

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**C.A. No. JP16-19-006968**

***TRIAL DE NOVO***

Submitted: November 15, 2019

Decided: November 21, 2019

**APPEARANCES:**

D&S Investments LLP, Plaintiff, was represented by Doug Doyle, who had a valid Form 50.

Cecilia Davidson, Defendant, appeared *pro se*.

***ORDER***

Cathleen M. Hutchison, Deputy Chief Magistrate  
Michael P. Sherlock, Justice of the Peace  
Dana M. Tracy, Justice of the Peace

On November 15, 2019 this Court, consisting of the Honorable Cathleen M. Hutchison, the Honorable Michael P. Sherlock and the Honorable Dana M. Tracy, acting as a special court pursuant to 25 *Del. C.* § 5717(a) convened a trial *de novo* in reference to a Landlord/Tenant Summary Possession petition filed by D&S Investments LLP (“Plaintiff”), against Cecilia Davidson (“Defendant”). Following the receipt of evidence and testimony, the Court reserved decision. This is the Court’s final decision and order.

### **Factual and Procedural Background**

Plaintiff filed a Landlord/Tenant Summary Possession petition with Justice of the Peace Court No. 16 seeking unpaid rent, late fees, possession and court costs. Trial was held on October 23, 2019 and the Court issued its Order entering judgment for the Defendant.<sup>1</sup> Plaintiff filed a timely appeal of the Court’s Order pursuant to 25 *Del. C.* § 5717(a). Consequently, trial *de novo* was scheduled.

### **Testimony and Evidence**

Prior to trial, plaintiff informed the Court that possession is no longer an issue. Plaintiff learned that Defendant had vacated the unit at the first trial on October 23, 2019. Plaintiff contends that Defendant unlawfully terminated the lease agreement. Plaintiff is seeking rent for September 2019 and per diem rent through October 22, 2019. Plaintiff introduced the following exhibits: Timeline Summary,<sup>2</sup> Text messages concerning request to treat bug infestation dated June 19, 2019, July 2, 2019 and August 23, 2019,<sup>3</sup> three

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<sup>1</sup> *D&S Investments v. Davidson*, Del. J.P., C.A. No. JP16-19-006968, Dillard, J. (Oct. 23, 2019).

<sup>2</sup> Plaintiff’s Exhibit 1.

<sup>3</sup> Plaintiff’s Exhibit 2.

invoices for pest treatment,<sup>4</sup> Summary of 25 *Del. C.* § 5113,<sup>5</sup> FedEx Express Delivery Notice received on September 12, 2019,<sup>6</sup> Letter dated September 18, 2019 from D&S Investments to Wolfe & Associates with Certificate of Mailing,<sup>7</sup> 5-Day Non Payment Letter dated September 18, 2019 with Certificate of Mailing,<sup>8</sup> E-mail dated October 7, 2019 from the City of Dover,<sup>9</sup> and Residential Lease/Rental Agreement.<sup>10</sup> Plaintiff testified that he did not know Defendant had vacated the unit because the keys were not returned to him.

Defendant introduced the following exhibits: Text messages and pictures of bugs,<sup>11</sup> Letter dated August 30, 2019 from Wolfe & Associates to D&S Investments,<sup>12</sup> Letter dated September 11, 2019 from Wolfe & Associates to D&S Investments,<sup>13</sup> and Residential Lease/Rental Agreement with Delaware Department of Justice Summary of the Delaware Residential Landlord-Tenant Code.<sup>14</sup> Defendant argues that she is not responsible for the payment of rent due to the roach infestation. In addition, her attorney sent a letter giving notice of termination of the lease within 15 days. The letter sent to Plaintiff by Wolfe & Associates dated August 30, 2019, reads in part: “Please consider this letter my Client’s formal notice that the lease is hereby terminated as of September 14, 2019, in accordance with the fifteen (15) day notice requirement of Delaware Code Title 25, Chapter 53 § 5302(b).”<sup>15</sup>

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<sup>4</sup> Plaintiff’s Exhibit 3.

<sup>5</sup> Plaintiff’s Exhibit 4.

<sup>6</sup> Plaintiff’s Exhibit 5.

<sup>7</sup> Plaintiff’s Exhibit 6.

<sup>8</sup> Plaintiff’s Exhibit 7.

<sup>9</sup> Plaintiff’s Exhibit 8.

<sup>10</sup> Plaintiff’s Exhibit 9.

<sup>11</sup> Defendant’s Exhibit 1.

<sup>12</sup> Defendant’s Exhibit 2.

<sup>13</sup> Defendant’s Exhibit 3.

<sup>14</sup> Defendant’s Exhibit 4.

<sup>15</sup> Defendant’s Exhibit 5.

Defendant admits non-payment of rent for September based on the advice of her attorney. Defendant testified that she moved out on September 14, 2019 and left the keys on the mantel.

Plaintiff contends that they were diligent in responding to Defendant's complaints about the bugs and took swift and immediate action. Plaintiff testified that there are four apartments in the building and there were no other complaints. Plaintiff stated that he never received the August 30 letter from Wolfe & Associates. The first time he became aware of the letter was when he received a follow-up letter on September 12, 2019. In addition, Plaintiff contends that the keys were never surrendered to him. He took possession of the apartment unit on October 23, 2019. When he entered the apartment, the keys were on the mantel.

### **Discussion and Findings**

Plaintiff is seeking rent for September 1, 2019 through October 22, 2019. Defendant argues that she gave notice and vacated on September 14, 2019. However, by her own admission she testified that she did not return the keys to management, but placed them on the mantel in the apartment. Number 24(b) of the residential lease/rental agreement reads in part: "Rules and Regulations: Locks:... "keys must be returned to Management of the premises upon termination of the occupancy."<sup>16</sup> The letter from Wolfe and Associates also advises Plaintiff, "In the intervening time, my Client will remove the balance of her personal property from the Premises .... Any attempt by you to prohibit her entry onto the Premises to do the same will result in my firm filing suit to regain entry and the assertion of any additional damages incurred as the result of the delay caused by your actions."<sup>17</sup>

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<sup>16</sup> Defendant's Exhibit 4.

<sup>17</sup> Defendant's Exhibit 2.

Defendant relies on 25 *Del. C.* § 5302(b) for termination of the rental agreement with 15 days' written notice. However, Plaintiff argues that he did not receive notice until September 12, 2019. Defendant did not provide any proof of service for the notice dated August 30, 2019. In addition, by her own admission, Defendant did not return the keys to management as required by the rules and regulations in the lease agreement. Management had no knowledge that Defendant had vacated the premises until the date of the first trial. After a careful review of the evidence and testimony presented, the Court finds that the Plaintiff met the burden of proof to show that Defendant failed to pay rent as required. Therefore, Defendant is responsible for payment of rent for the period of September 1, 2019 through October 22, 2019 as follows: \$775 (September Rent), \$550 (October Rent @ \$25 per day) and \$77.50 late fees (\$38.75 for September /October).

### **Conclusion**

Based on the foregoing, the panel finds by unanimous verdict in favor of the Plaintiff D&S Investments LLP and against Defendant Cecilia Davidson as follows:

Claim Amount: \$1,402.50

Court Costs: \$45.00

Post Judgment Interest @ 7.50%

**IT IS SO ORDERED**, this 21st day of November, 2019.

**For the Court,**

 (SEAL)  
Cathleen M. Hutchison

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